

110TH CONGRESS
1ST SESSION

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To ensure national security while promoting foreign investment and the creation and maintenance of jobs, to reform the process by which such investments are examined for any effect they may have on national security, to establish the Committee on Foreign Investment in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice
and referred to the Committee on

A BILL

To ensure national security while promoting foreign investment and the creation and maintenance of jobs, to reform the process by which such investments are examined for any effect they may have on national security, to establish the Committee on Foreign Investment in the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Foreign Investment and National Security Act of 2007”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. United States security improvement amendments; clarification of review and investigation process.
- Sec. 3. Statutory establishment of the Committee on Foreign Investment in the United States.
- Sec. 4. Additional factors for consideration.
- Sec. 5. Mitigation, tracking, and postconsummation monitoring and enforcement.
- Sec. 6. Action by the President.
- Sec. 7. Increased oversight by Congress.
- Sec. 8. Certification of notices and assurances.
- Sec. 9. Regulations.
- Sec. 10. Effect on other law.
- Sec. 11. Effective date.

3 **SEC. 2. UNITED STATES SECURITY IMPROVEMENT AMEND-**
4 **MENTS; CLARIFICATION OF REVIEW AND IN-**
5 **VESTIGATION PROCESS.**

6 Section 721 of the Defense Production Act of 1950
7 (50 U.S.C. App. 2170) is amended by striking subsections
8 (a) and (b) and inserting the following:

9 “(a) DEFINITIONS.—For purposes of this section, the
10 following definitions shall apply:

11 “(1) COMMITTEE; CHAIRPERSON.—The terms
12 ‘Committee’ and ‘chairperson’ mean the Committee
13 on Foreign Investment in the United States and the
14 chairperson thereof, respectively.

15 “(2) CONTROL.—The term ‘control’ has the
16 meaning given to such term in regulations which the
17 Committee shall prescribe.

18 “(3) COVERED TRANSACTION.—The term ‘cov-
19 ered transaction’ means any merger, acquisition, or

1 takeover, by or with any foreign person which could
2 result in foreign control of any person engaged in
3 interstate commerce in the United States.

4 “(4) FOREIGN GOVERNMENT-CONTROLLED
5 TRANSACTION.—The term ‘foreign government-con-
6 trolled transaction’ means any covered transaction
7 that could result in the control of any person en-
8 gaged in interstate commerce in the United States
9 by a foreign government or an entity controlled by
10 or acting on behalf of a foreign government.

11 “(5) CLARIFICATION.—The term ‘national secu-
12 rity’ shall be construed so as to include those issues
13 relating to ‘homeland security’, including its applica-
14 tion to critical infrastructure.

15 “(6) CRITICAL INFRASTRUCTURE.—The term
16 ‘critical infrastructure’ means, subject to rules
17 issued under this section, any systems and assets,
18 whether physical or cyber-based, so vital to the
19 United States that the degradation or destruction of
20 such systems or assets would have a debilitating im-
21 pact on national security, including national eco-
22 nomic security and national public health or safety.

23 “(7) CRITICAL TECHNOLOGIES.—The term
24 ‘critical technologies’ means technologies identified
25 under title VI of the National Science and Tech-

1 nology Policy, Organization, and Priorities Act of
2 1976, or other critical technology, critical compo-
3 nents, or critical technology items essential to na-
4 tional defense identified pursuant to this section.

5 “(8) LEAD AGENCY.—The term ‘lead agency’
6 means the agency, or agencies, designated as the
7 lead agency or agencies pursuant to subsection
8 (k)(4) for the review of a transaction.

9 “(b) NATIONAL SECURITY REVIEWS AND INVESTIGA-
10 TIONS.—

11 “(1) NATIONAL SECURITY REVIEWS.—

12 “(A) IN GENERAL.—Upon receiving writ-
13 ten notification under subparagraph (C) of any
14 covered transaction, pursuant to a unilateral
15 notification initiated under subparagraph (D)
16 with respect to any covered transaction, the
17 President, acting through the Committee—

18 “(i) shall review the covered trans-
19 action to determine the effects of the
20 transaction on the national security of the
21 United States; and

22 “(ii) shall consider the factors speci-
23 fied in subsection (f) for such purpose, as
24 appropriate.

1 “(B) CONTROL BY FOREIGN GOVERN-
2 MENT.—If the Committee determines that the
3 covered transaction is a foreign government-
4 controlled transaction, the Committee shall con-
5 duct an investigation of the transaction under
6 paragraph (2).

7 “(C) WRITTEN NOTICE.—

8 “(i) IN GENERAL.—Any party or par-
9 ties to any covered transaction may initiate
10 a review of the transaction under this
11 paragraph by submitting a written notice
12 of the transaction to the Chairperson of
13 the Committee.

14 “(ii) WITHDRAWAL OF NOTICE.—No
15 covered transaction for which a notice was
16 submitted under clause (i) may be with-
17 drawn from review, unless a written re-
18 quest for such withdrawal is submitted to
19 the Committee by any party to the trans-
20 action and approved by the Committee.

21 “(iii) CONTINUING DISCUSSIONS.—A
22 request for withdrawal under clause (ii)
23 shall not be construed to preclude any
24 party to the covered transaction from con-
25 tinuing informal discussions with the Com-

1 mittee or any member thereof regarding
2 possible resubmission for review pursuant
3 to this paragraph.

4 “(D) UNILATERAL INITIATION OF RE-
5 VIEW.—Subject to subparagraph (F), the Presi-
6 dent or the Committee may initiate a review
7 under subparagraph (A) of—

8 “(i) any covered transaction;

9 “(ii) any covered transaction that has
10 previously been reviewed or investigated
11 under this section, if any party to the
12 transaction submitted false or misleading
13 material information to the Committee in
14 connection with the review or investigation
15 or omitted material information, including
16 material documents, from information sub-
17 mitted to the Committee; or

18 “(iii) any covered transaction that has
19 previously been reviewed or investigated
20 under this section, if—

21 “(I) any party to the transaction
22 or the entity resulting from con-
23 summation of the transaction inten-
24 tionally materially breaches a mitiga-

1 tion agreement or condition described
2 in subsection (l)(1)(A);

3 “(II) such breach is certified to
4 the Committee by the lead department
5 or agency monitoring and enforcing
6 such agreement or condition as an in-
7 tentional material breach; and

8 “(III) the Committee determines
9 that there are no other remedies or
10 enforcement tools available to address
11 such breach.

12 “(E) TIMING.—Any review under this
13 paragraph shall be completed before the end of
14 the 30-day period beginning on the date of the
15 acceptance of written notice under subpara-
16 graph (C) by the chairperson, or beginning on
17 the date of the initiation of the review in ac-
18 cordance with a motion under subparagraph
19 (D), as applicable.

20 “(F) LIMIT ON DELEGATION OF CERTAIN
21 AUTHORITY.—The authority of the Committee
22 to initiate a review under subparagraph (D)
23 may not be delegated to any person, other than
24 the Deputy Secretary or an appropriate Under

1 Secretary of the department or agency rep-
2 resented on the Committee.

3 “(2) NATIONAL SECURITY INVESTIGATIONS.—

4 “(A) IN GENERAL.—In each case described
5 in subparagraph (B) the President, acting
6 through the Committee, shall immediately con-
7 duct an investigation of the effects of a covered
8 transaction on the national security of the
9 United States, and take any necessary actions
10 in connection with the transaction to protect
11 the national security of the United States.

12 “(B) APPLICABILITY.—Subparagraph (A)
13 shall apply in each case in which—

14 “(i) a review of a covered transaction
15 under paragraph (1) results in a deter-
16 mination that—

17 “(I) the transaction threatens to
18 impair the national security of the
19 United States and that threat has not
20 been mitigated during or prior to the
21 review of a covered transaction under
22 paragraph (1);

23 “(II) the transaction is a foreign
24 government-controlled transaction; or

1 “(III) the transaction would re-
2 sult in control of any critical infra-
3 structure of or within the United
4 States by, with, or on behalf of any
5 foreign person, if the Committee de-
6 termines that the transaction could
7 impair national security, and that
8 such impairment to national security
9 has not been mitigated by assurances
10 provided or renewed with the approval
11 of the Committee, as described in sub-
12 section (l), during the review period
13 under paragraph (1); or

14 “(ii) the lead agency recommends, and
15 the Committee concurs, that an investiga-
16 tion be undertaken.

17 “(C) TIMING.—Any investigation under
18 subparagraph (A) shall be completed before the
19 end of the 45-day period beginning on the date
20 on which the investigation commenced.

21 “(D) EXCEPTION.—

22 “(i) IN GENERAL.—Notwithstanding
23 subparagraph (B)(i), an investigation of a
24 foreign government-controlled transaction
25 described in subclause (II) of subpara-

graph (B)(i) or a transaction involving critical infrastructure described in subclause (III) of subparagraph (B)(i) shall not be required under this paragraph, if the Secretary of the Treasury and the head of the lead agency jointly determine, on the basis of the review of the transaction under paragraph (1), that the transaction will not impair the national security of the United States.

“(ii) NONDELEGATION.—The authority of the Secretary or the head of an agency referred to in clause (i) may not be delegated to any person, other than the Deputy Secretary of the Treasury or the deputy head (or the equivalent thereof) of the lead agency, respectively.

“(E) GUIDANCE ON CERTAIN TRANSACTIONS WITH NATIONAL SECURITY IMPLICATIONS.—The Chairperson shall, not later than 180 days after the date of enactment of the Foreign Investment and National Security Act of 2007, publish in the Federal Register guidance on the types of transactions that the Committee has reviewed and that have presented

1 national security considerations, including
2 transactions that may constitute covered trans-
3 actions that would result in control of critical
4 infrastructure relating to United States na-
5 tional security by a foreign government or an
6 entity controlled by or acting on behalf of a for-
7 eign government.

8 “(3) CERTIFICATIONS TO CONGRESS.—

9 “(A) CERTIFIED NOTICE AT COMPLETION
10 OF REVIEW.—Upon completion of a review
11 under subsection (b) that concludes action
12 under this section, the chairperson and the
13 head of the lead agency shall transmit a cer-
14 tified notice to the members of Congress speci-
15 fied in subparagraph (C)(iii).

16 “(B) CERTIFIED REPORT AT COMPLETION
17 OF INVESTIGATION.—As soon as is practicable
18 after completion of an investigation under sub-
19 section (b) that concludes action under this sec-
20 tion, the chairperson and the head of the lead
21 agency shall transmit to the members of Con-
22 gress specified in subparagraph (C)(iii) a cer-
23 tified written report (consistent with the re-
24 quirements of subsection (c)) on the results of
25 the investigation, unless the matter under inves-

1 tigation has been sent to the President for deci-
2 sion.

3 “(C) CERTIFICATION PROCEDURES.—

4 “(i) IN GENERAL.—Each certified no-
5 tice and report required under subpara-
6 graphs (A) and (B), respectively, shall be
7 submitted to the members of Congress
8 specified in clause (iii), and shall include—

9 “(I) a description of the actions
10 taken by the Committee with respect
11 to the transaction; and

12 “(II) identification of the deter-
13 minative factors considered under
14 subsection (f).

15 “(ii) CONTENT OF CERTIFICATION.—
16 Each certified notice and report required
17 under subparagraphs (A) and (B), respec-
18 tively, shall be signed by the chairperson
19 and the head of the lead agency, and shall
20 state that, in the determination of the
21 Committee, there are no unresolved na-
22 tional security concerns with the trans-
23 action that is the subject of the notice or
24 report.

1 “(iii) MEMBERS OF CONGRESS.—Each
2 certified notice and report required under
3 subparagraphs (A) and (B), respectively,
4 shall be transmitted to—

5 “(I) the Majority Leader and the
6 Minority Leader of the Senate;

7 “(II) the chair and ranking mem-
8 ber of the Committee on Banking,
9 Housing, and Urban Affairs of the
10 Senate and of any committee of the
11 Senate having oversight over the lead
12 agency;

13 “(III) the Speaker and the Mi-
14 nority Leader of the House of Rep-
15 resentatives; and

16 “(IV) the chair and ranking
17 member of the Committee on Finan-
18 cial Services of the House of Rep-
19 resentatives and of any committee of
20 the House of Representatives having
21 oversight over the lead agency.

22 “(iv) TRANSMITTAL TO OTHER MEM-
23 BERS OF CONGRESS.—The Majority Lead-
24 er or the Minority Leader, in the case of
25 the Senate, and the Speaker or the Minor-

1 ity Leader, in the case of the House of
2 Representatives, may provide the certified
3 notices and reports required under sub-
4 paragraphs (A) and (B), respectively, re-
5 garding a transaction involving critical in-
6 frastructure—

7 “(I) in the case of the Senate, to
8 members of the Senate from the State
9 in which such critical infrastructure is
10 located; and

11 “(II) in the case of the House of
12 Representatives, to a member from a
13 Congressional District in which such
14 critical infrastructure is located.

15 “(v) SIGNATURES; LIMIT ON DELEGA-
16 TION.—

17 “(I) IN GENERAL.—Each cer-
18 tified notice and report required under
19 subparagraphs (A) and (B), respec-
20 tively, shall be signed by the chair-
21 person and the head of the lead agen-
22 cy, which signature requirement may
23 only be delegated in accordance with
24 subclause (II).

1 “(II) LIMITATION ON DELEGA-
2 TION OF CERTIFICATIONS.—The
3 chairperson and the head of the lead
4 agency may delegate the signature re-
5 quirement under subclause (I)—

6 “(aa) only to an employee of
7 the Department of the Treasury
8 (in the case of the Secretary of
9 the Treasury) or to an employee
10 of the lead agency (in the case of
11 the lead agency) who was ap-
12 pointed by the President, by and
13 with the advice and consent of
14 the Senate, with respect to any
15 notice provided under paragraph
16 (1) following the completion of a
17 review under this section; or

18 “(bb) only to a Deputy Sec-
19 retary of the Treasury (in the
20 case of the Secretary of the
21 Treasury) or a person serving in
22 the Deputy position or the equiv-
23 alent thereof at the lead agency
24 (in the case of the lead agency),
25 with respect to any report pro-

1 vided under subparagraph (B)
2 following an investigation under
3 this section.

4 “(4) ANALYSIS BY DIRECTOR OF NATIONAL IN-
5 TELLIGENCE.—

6 “(A) IN GENERAL.—The Director of Na-
7 tional Intelligence shall expeditiously carry out
8 a thorough analysis of any threat to the na-
9 tional security of the United States posed by
10 any covered transaction. The Director of Na-
11 tional Intelligence shall also seek and incor-
12 porate the views of all affected or appropriate
13 intelligence agencies with respect to the trans-
14 action.

15 “(B) TIMING.—The analysis required
16 under subparagraph (A) shall be provided by
17 the Director of National Intelligence to the
18 Committee not later than 20 days after the
19 date on which notice of the transaction is ac-
20 cepted by the Committee under paragraph
21 (1)(C), but the Director may begin the analysis
22 at any time prior to receipt of the notice, in ac-
23 cordance with otherwise applicable law.

24 “(C) INTERACTION WITH INTELLIGENCE
25 COMMUNITY.—The Director of National Intel-

1 ligence shall ensure that the intelligence com-
2 munity remains engaged in the collection, anal-
3 ysis, and dissemination to the Committee of any
4 additional relevant information that may be-
5 come available during the course of any inves-
6 tigation conducted under subsection (b) with re-
7 spect to a transaction.

8 “(D) INDEPENDENT ROLE OF DIREC-
9 TOR.—The Director of National Intelligence
10 shall be an ex officio member of the Committee,
11 and shall be provided with all notices received
12 by the Committee under paragraph (1)(C) re-
13 garding covered transactions, but shall serve no
14 policy role on the Committee, other than to pro-
15 vide analysis under subparagraph (A) in con-
16 nection with a covered transaction.

17 “(5) SUBMISSION OF ADDITIONAL INFORMA-
18 TION.—No provision of this subsection shall be con-
19 strued as prohibiting any party to a covered trans-
20 action from submitting additional information con-
21 cerning the transaction, including any proposed re-
22 structuring of the transaction or any modifications
23 to any agreements in connection with the trans-
24 action, while any review or investigation of the
25 transaction is ongoing.

1 “(6) NOTICE OF RESULTS TO PARTIES.—The
2 Committee shall notify the parties to a covered
3 transaction of the results of a review or investigation
4 under this section, promptly upon completion of all
5 action under this section.

6 “(7) REGULATIONS.—Regulations prescribed
7 under this section shall include standard procedures
8 for—

9 “(A) submitting any notice of a covered
10 transaction to the Committee;

11 “(B) submitting a request to withdraw a
12 covered transaction from review;

13 “(C) resubmitting a notice of a covered
14 transaction that was previously withdrawn from
15 review; and

16 “(D) providing notice of the results of a
17 review or investigation to the parties to the sub-
18 ject covered transaction, upon completion of all
19 action under this section.”.

20 **SEC. 3. STATUTORY ESTABLISHMENT OF THE COMMITTEE**
21 **ON FOREIGN INVESTMENT IN THE UNITED**
22 **STATES.**

23 Section 721 of the Defense Production Act of 1950
24 (50 U.S.C. App. 2170) is amended by striking subsection
25 (k) and inserting the following:

1 “(k) COMMITTEE ON FOREIGN INVESTMENT IN THE
2 UNITED STATES.—

3 “(1) ESTABLISHMENT.—The Committee on
4 Foreign Investment in the United States, established
5 pursuant to Executive Order No. 11858, shall be a
6 multi agency committee to carry out this section and
7 such other assignments as the President may des-
8 ignate.

9 “(2) MEMBERSHIP.—The Committee shall be
10 comprised of the following members or the designee
11 of any such member:

12 “(A) The Secretary of the Treasury.

13 “(B) The Secretary of Homeland Security.

14 “(C) The Secretary of Commerce.

15 “(D) The Secretary of Defense.

16 “(E) The Secretary of State.

17 “(F) The Attorney General of the United
18 States.

19 “(G) The Secretary of Energy.

20 “(H) The Secretary of Labor (ex officio).

21 “(I) The Director of National Intelligence
22 (ex officio).

23 “(J) The heads of any other executive de-
24 partment, agency, or office, as the President

1 determines appropriate, generally or on a case-
2 by-case basis.

3 “(3) CHAIRPERSON.—The Secretary of the
4 Treasury shall serve as the chairperson of the Com-
5 mittee.

6 “(4) DESIGNATION OF LEAD AGENCY.—The
7 Secretary of the Treasury shall designate another
8 member or members, as appropriate, of the Com-
9 mittee to be the lead agency or agencies on behalf
10 of the Committee—

11 “(A) for each covered transaction, and for
12 negotiating any mitigation agreements or other
13 conditions necessary to protect national secu-
14 rity; and

15 “(B) for all matters related to the moni-
16 toring of the completed transaction, to ensure
17 compliance with such agreements or conditions
18 and with this section.

19 “(5) OTHER MEMBERS.—The chairperson shall
20 consult with the heads of such other Federal depart-
21 ments, agencies, and independent establishments in
22 any review or investigation under subsection (a), as
23 the chairperson determines to be appropriate, on the
24 basis of the facts and circumstances of the covered

1 transaction under investigation (or the designee of
2 any such department or agency head).

3 “(6) MEETINGS.—The Committee shall meet
4 upon the direction of the President or upon the call
5 of the chairperson, without regard to section 552b of
6 title 5, United States Code (if otherwise applica-
7 ble).”.

8 **SEC. 4. ADDITIONAL FACTORS FOR CONSIDERATION.**

9 Section 721(f) of the Defense Production Act of 1950
10 (50 U.S.C. App. 2170(f)) is amended—

11 (1) in the matter preceding paragraph (1), by
12 striking “among other factors”;

13 (2) in paragraph (4)—

14 (A) in subparagraph (A) by striking “or”
15 at the end;

16 (B) by redesignating subparagraph (B) as
17 subparagraph (C);

18 (C) by inserting after subparagraph (A)
19 the following:

20 “(B) identified by the Secretary of Defense
21 as posing a potential regional military threat to
22 the interests of the United States; or”; and

23 (D) by striking “and” at the end;

24 (3) in paragraph (5), by striking the period at
25 the end and inserting a semicolon; and

1 (4) by adding at the end the following:

2 “(6) whether the covered transaction has a se-
3 curity-related impact on critical infrastructure in the
4 United States;

5 “(7) the potential effects on United States crit-
6 ical infrastructure, including major energy assets;

7 “(8) the potential effects on United States crit-
8 ical technologies;

9 “(9) whether the covered transaction is a for-
10 eign government-controlled transaction, as deter-
11 mined under subsection (b)(1)(B);

12 “(10) with respect to transactions requiring an
13 investigation under subsection (b)(1)(B) only, a re-
14 view of the current assessment of—

15 “(A) the adherence of the subject country
16 to nonproliferation control regimes, including
17 treaties and multilateral supply guidelines,
18 which shall draw on, but not be limited to, the
19 annual report on ‘Adherence to and Compliance
20 with Arms Control, Nonproliferation and Disar-
21 mament Agreements and Commitments’ re-
22 quired by section 403 of the Arms Control and
23 Disarmament Act;

24 “(B) the relationship of such country with
25 the United States, specifically on its record on

1 cooperating in counter-terrorism efforts, which
2 shall draw on, but not be limited to, the report
3 of the President to Congress under section
4 7120 of the Intelligence Reform and Terrorism
5 Prevention Act of 2004; and

6 “(C) the potential for transshipment or di-
7 version of technologies with military applica-
8 tions, including an analysis of national export
9 control laws and regulations;

10 “(11) the long-term projection of United States
11 requirements for sources of energy and other critical
12 resources and material; and

13 “(12) such other factors as the President or the
14 Committee may determine to be appropriate, gen-
15 erally or in connection with a specific review or in-
16 vestigation.”.

17 **SEC. 5. MITIGATION, TRACKING, AND POSTCONSUMMATION**
18 **MONITORING AND ENFORCEMENT.**

19 Section 721 of the Defense Production Act of 1950
20 (50 U.S.C. App. 2170) is amended by adding at the end
21 the following:

22 “(1) MITIGATION, TRACKING, AND
23 POSTCONSUMMATION MONITORING AND ENFORCE-
24 MENT.—

25 “(1) MITIGATION.—

“(A) IN GENERAL.—The Committee or a lead agency may, on behalf of the Committee, negotiate, enter into or impose, and enforce any agreement or condition with any party to the covered transaction in order to mitigate any threat to the national security of the United States that arises as a result of the covered transaction.

9 “(B) RISK-BASED ANALYSIS REQUIRED.—
10 Any agreement entered into or condition im-
11 posed under subparagraph (A) shall be based
12 on a risk-based analysis, conducted by the Com-
13 mittee, of the threat to national security of the
14 covered transaction.

15 “(2) TRACKING AUTHORITY FOR WITHDRAWN
16 NOTICES.—

“(A) IN GENERAL.—If any written notice of a covered transaction that was submitted to the Committee under this section is withdrawn before any review or investigation by the Committee under subsection (b) is completed, the Committee shall establish, as appropriate—

23 “(i) interim protections to address
24 specific concerns with such transaction
25 that have been raised in connection with

1 any such review or investigation pending
2 any resubmission of any written notice
3 under this section with respect to such
4 transaction and further action by the
5 President under this section;

6 “(ii) specific time frames for resub-
7 mitting any such written notice; and

8 “(iii) a process for tracking any ac-
9 tions that may be taken by any party to
10 the transaction, in connection with the
11 transaction, before the notice referred to in
12 clause (ii) is resubmitted.

13 “(B) DESIGNATION OF AGENCY.—The lead
14 agency, other than any entity of the intelligence
15 community (as defined in the National Security
16 Act of 1947), shall, on behalf of the Committee,
17 ensure that the requirements of subparagraph
18 (A) with respect to any covered transaction that
19 is subject to such subparagraph are met.

20 “(3) NEGOTIATION, MODIFICATION, MONI-
21 TORING, AND ENFORCEMENT.—

22 “(A) DESIGNATION OF LEAD AGENCY.—
23 The lead agency shall negotiate, modify, mon-
24 itor, and enforce, on behalf of the Committee,
25 any agreement entered into or condition im-

posed under paragraph (1) with respect to a covered transaction, based on the expertise with and knowledge of the issues related to such transaction on the part of the designated department or agency. Nothing in this paragraph shall prohibit other departments or agencies in assisting the lead agency in carrying out the purposes of this paragraph.

“(B) REPORTING BY DESIGNATED AGENCY.—

“(i) MODIFICATION REPORTS.—The lead agency in connection with any agreement entered into or condition imposed with respect to a covered transaction shall—

“(I) provide periodic reports to the Committee on any material modification to any such agreement or condition imposed with respect to the transaction; and

“(II) ensure that any material modification to any such agreement or condition is reported to the Director of National Intelligence, the Attorney General of the United States, and any

1 other Federal department or agency
2 that may have a material interest in
3 such modification.

4 “(ii) COMPLIANCE.—The Committee
5 shall develop and agree upon methods for
6 evaluating compliance with any agreement
7 entered into or condition imposed with re-
8 spect to a covered transaction that will
9 allow the Committee to adequately assure
10 compliance, without—

11 “(I) unnecessarily diverting Com-
12 mittee resources from assessing any
13 new covered transaction for which a
14 written notice has been filed pursuant
15 to subsection (b)(1)(C), and if nec-
16 essary, reaching a mitigation agree-
17 ment with or imposing a condition on
18 a party to such covered transaction or
19 any covered transaction for which a
20 review has been reopened for any rea-
21 son; or

22 “(II) placing unnecessary bur-
23 dens on a party to a covered trans-
24 action.”.

1 **SEC. 6. ACTION BY THE PRESIDENT.**

2 Section 721 of the Defense Production Act of 1950
3 (50 U.S.C. App. 2170) is amended by striking subsections
4 (d) and (e) and inserting the following:

5 “(d) ACTION BY THE PRESIDENT.—

6 “(1) IN GENERAL.—Subject to paragraph (4),
7 the President may take such action for such time as
8 the President considers appropriate to suspend or
9 prohibit any covered transaction by or with a foreign
10 person or government that threatens to impair the
11 national security of the United States.

12 “(2) ANNOUNCEMENT BY THE PRESIDENT.—

13 The President shall announce the decision on wheth-
14 er or not to take action pursuant to paragraph (1)
15 not later than 15 days after the date on which an
16 investigation described in subsection (b) is com-
17 pleted.

18 “(3) ENFORCEMENT.—The President may di-
19 rect the Attorney General of the United States to
20 seek appropriate relief, including divestment relief,
21 in the district courts of the United States, in order
22 to implement and enforce this subsection.

23 “(4) FINDINGS OF THE PRESIDENT.—The
24 President may exercise the authority conferred by
25 paragraph (1), only if the President finds that—

1 “(A) there is credible evidence that leads
2 the President to believe that the foreign interest
3 exercising control might take action that threat-
4 ens to impair the national security; and

5 “(B) provisions of law, other than this sec-
6 tion and the International Emergency Economic
7 Powers Act, do not, in the judgment of the
8 President, provide adequate and appropriate
9 authority for the President to protect the na-
10 tional security in the matter before the Presi-
11 dent.

12 “(5) FACTORS TO BE CONSIDERED.—For pur-
13 poses of determining whether to take action under
14 paragraph (1), the President shall consider, among
15 other factors each of the factors described in sub-
16 section (f).

17 “(e) ACTIONS AND FINDINGS NONREVIEWABLE.—
18 The actions of the President under paragraph (1) of sub-
19 section (d) and the findings of the President under para-
20 graph (4) of subsection (d) shall not be subject to judicial
21 review.”.

22 **SEC. 7. INCREASED OVERSIGHT BY CONGRESS.**

23 (a) REPORT ON ACTIONS.—Section 721(g) of the De-
24 fense Production Act of 1950 (50 U.S.C. App. 2170(g))
25 is amended to read as follows:

1 “(g) ADDITIONAL INFORMATION TO CONGRESS; CON-
2 FIDENTIALITY.—

3 “(1) BRIEFING REQUIREMENT ON REQUEST.—

4 The Committee shall, upon request from any Mem-
5 ber of Congress specified in subsection (b)(3)(C)(iii),
6 promptly provide briefings on a covered transaction
7 for which all action has concluded under this section,
8 or on compliance with a mitigation agreement or
9 condition imposed with respect to such transaction,
10 on a classified basis, if deemed necessary by the sen-
11 sitivity of the information. Briefings under this
12 paragraph may be provided to the congressional
13 staff of such a Member of Congress having appro-
14 priate security clearance.

15 “(2) APPLICATION OF CONFIDENTIALITY PROVI-
16 SIONS.—

17 “(A) IN GENERAL.—The disclosure of in-
18 formation under this subsection shall be con-
19 sistent with the requirements of subsection (c).
20 Members of Congress and staff of either House
21 of Congress or any committee of Congress, shall
22 be subject to the same limitations on disclosure
23 of information as are applicable under sub-
24 section (c).

1 “(B) PROPRIETARY INFORMATION.—Pro-
2 prietary information which can be associated
3 with a particular party to a covered transaction
4 shall be furnished in accordance with subpara-
5 graph (A) only to a committee of Congress, and
6 only when the committee provides assurances of
7 confidentiality, unless such party otherwise con-
8 sents in writing to such disclosure.”.

9 (b) ANNUAL REPORT.—Section 721 of the Defense
10 Production Act of 1950 (50 U.S.C. App. 2170) is amend-
11 ed by adding at the end the following:

12 “(m) ANNUAL REPORT TO CONGRESS.—

13 “(1) IN GENERAL.—The chairperson shall
14 transmit a report to the chairman and ranking
15 member of the committee of jurisdiction in the Sen-
16 ate and the House of Representatives, before July
17 31 of each year on all of the reviews and investiga-
18 tions of covered transactions completed under sub-
19 section (b) during the 12-month period covered by
20 the report.

21 “(2) CONTENTS OF REPORT RELATING TO COV-
22 ERED TRANSACTIONS.—The annual report under
23 paragraph (1) shall contain the following informa-
24 tion with respect to each covered transaction for the
25 reporting period:

1 “(A) A list of all notices filed and all re-
2 views or investigations completed during the pe-
3 riod, with basic information on each party to
4 the transaction, the nature of the business ac-
5 tivities or products of all pertinent persons,
6 along with information about any withdrawal
7 from the process, and any decision or action by
8 the President under this section.

9 “(B) Specific, cumulative, and, as appro-
10 priate, trend information on the numbers of fil-
11 ings, investigations, withdrawals, and decisions
12 or actions by the President under this section.

13 “(C) Cumulative and, as appropriate,
14 trend information on the business sectors in-
15 volved in the filings which have been made, and
16 the countries from which the investments have
17 originated.

18 “(D) Information on whether companies
19 that withdrew notices to the Committee in ac-
20 cordance with subsection (b)(1)(C)(ii) have
21 later refiled such notices, or, alternatively,
22 abandoned the transaction.

23 “(E) The types of security arrangements
24 and conditions the Committee has used to miti-
25 gate national security concerns about a trans-

1 action, including a discussion of the methods
2 that the Committee and any lead agency are
3 using to determine compliance with such ar-
4 rangements or conditions.

“(F) A detailed discussion of all perceived adverse effects of covered transactions on the national security or critical infrastructure of the United States that the Committee will take into account in its deliberations during the period before delivery of the next report, to the extent possible.

12 “(3) CONTENTS OF REPORT RELATING TO
13 CRITICAL TECHNOLOGIES.—

“(A) IN GENERAL.—In order to assist Congress in its oversight responsibilities with respect to this section, the President and such agencies as the President shall designate shall include in the annual report submitted under paragraph (1)—

20 “(i) an evaluation of whether there is
21 credible evidence of a coordinated strategy
22 by 1 or more countries or companies to ac-
23 quire United States companies involved in
24 research, development, or production of

1 critical technologies for which the United
2 States is a leading producer; and

3 “(ii) an evaluation of whether there
4 are industrial espionage activities directed
5 or directly assisted by foreign governments
6 against private United States companies
7 aimed at obtaining commercial secrets re-
8 lated to critical technologies.

9 “(B) RELEASE OF UNCLASSIFIED
10 STUDY.—That portion of the annual report
11 under paragraph (1) that is required by this
12 paragraph may be classified. An unclassified
13 version of the report, as appropriate, consistent
14 with safeguarding national security and privacy,
15 shall be made available to the public.”.

16 (c) STUDY AND REPORT.—

17 (1) STUDY REQUIRED.—Before the end of the
18 120-day period beginning on the date of enactment
19 of this Act and annually thereafter, the Secretary of
20 the Treasury, in consultation with the Secretary of
21 State and the Secretary of Commerce, shall conduct
22 a study on foreign direct investments in the United
23 States, especially investments in critical infrastruc-
24 ture and industries affecting national security, by—

1 (A) foreign governments, entities controlled
2 by or acting on behalf of a foreign government,
3 or persons of foreign countries which comply
4 with any boycott of Israel; or

5 (B) foreign governments, entities con-
6 trolled by or acting on behalf of a foreign gov-
7 ernment, or persons of foreign countries which
8 do not ban organizations designated by the Sec-
9 retary of State as foreign terrorist organiza-
10 tions.

11 (2) REPORT.—Before the end of the 30-day pe-
12 riod beginning upon completion of each study under
13 paragraph (1), or in the next annual report under
14 section 721(r) of the Defense Production Act of
15 1950 (as added by this section), the Secretary of the
16 Treasury shall submit a report to the Congress, for
17 transmittal to all appropriate committees of the Sen-
18 ate and the House of Representatives, containing the
19 findings and conclusions of the Secretary with re-
20 spect to the study described in paragraph (1), to-
21 gether with an analysis of the effects of such invest-
22 ment on the national security of the United States
23 and on any efforts to address those effects.

24 (d) INVESTIGATION BY INSPECTOR GENERAL.—

1 (1) IN GENERAL.—The Inspector General of
2 the Department of the Treasury shall conduct an
3 independent investigation to determine all of the
4 facts and circumstances concerning each failure of
5 the Department of the Treasury to make any report
6 to the Congress that was required under section
7 721(k) of the Defense Production Act of 1950, as in
8 effect on the day before the date of enactment of
9 this Act.

10 (2) REPORT TO THE CONGRESS.—Before the
11 end of the 270-day period beginning on the date of
12 enactment of this Act, the Inspector General of the
13 Department of the Treasury shall submit a report
14 on the investigation under paragraph (1) containing
15 the findings and conclusions of the Inspector Gen-
16 eral, to the chairman and ranking member of each
17 committee of the Senate and the House of Rep-
18 resentatives having jurisdiction over any aspect of
19 the report, including, at a minimum, the Committee
20 on Foreign Relations, the Committee on Banking,
21 Housing, and Urban Affairs, and the Committee on
22 Commerce, Science, and Transportation of the Sen-
23 ate, and the Committee on Foreign Affairs, the
24 Committee on Financial Services, and the Com-

1 mittee on Energy and Commerce of the House of
2 Representatives.

3 **SEC. 8. CERTIFICATION OF NOTICES AND ASSURANCES.**

4 Section 721 of the Defense Production Act of 1950
5 (50 U.S.C. App. 2170) is amended by adding at the end
6 the following:

7 “(n) CERTIFICATION OF NOTICES AND ASSUR-
8 ANCES.—Each notice, and any followup information, sub-
9 mitted under this section and regulations prescribed under
10 this section to the President or the Committee by a party
11 to a covered transaction, and any information submitted
12 by any such party in connection with any action for which
13 a report is required pursuant to paragraph (3)(B) of sub-
14 section (l), with respect to the implementation of any miti-
15 gation agreement or condition described in paragraph
16 (1)(A) of subsection (l), or any material change in cir-
17 cumstances, shall be accompanied by a written statement
18 by the chief executive officer or the designee of the person
19 required to submit such notice or information certifying
20 that, to the best of the knowledge and belief of that per-
21 son—

22 “(1) the notice or information submitted fully
23 complies with the requirements of this section or
24 such regulation, agreement, or condition; and

1 “(2) the notice or information is accurate and
2 complete in all material respects.”.

3 **SEC. 9. REGULATIONS.**

4 Section 721(h) of the Defense Production Act of
5 1950 (50 U.S.C. App. 2170(h)) is amended to read as
6 follows:

7 “(h) REGULATIONS.—

8 “(1) IN GENERAL.—The President shall direct,
9 subject to notice and comment, the issuance of regu-
10 lations to carry out this section.

11 “(2) EFFECTIVE DATE.—Regulations issued
12 under this section shall become effective not later
13 than 180 days after the effective date of the Foreign
14 Investment and National Security Act of 2007.

15 “(3) CONTENT.—Regulations issued under this
16 subsection shall—

17 “(A) provide for the imposition of civil
18 penalties for any violation of this section;

19 “(B) to the extent possible—

20 “(i) minimize paperwork burdens; and

21 “(ii) coordinate reporting require-
22 ments under this section with reporting re-
23 quirements under any other provision of
24 Federal law; and

1 “(C) provide for an appropriate role for
2 the Secretary of Labor with respect to mitiga-
3 tion agreements.”.

4 **SEC. 10. EFFECT ON OTHER LAW.**

5 Section 721(i) of the Defense Production Act of 1950
6 (50 U.S.C. App. 2170(i)) is amended to read as follows:

7 “(i) EFFECT ON OTHER LAW.—No provision of this
8 section shall be construed as altering or affecting any
9 other authority, process, regulation, investigation, enforce-
10 ment measure, or review provided by or established under
11 any other provision of Federal law, including the Inter-
12 national Emergency Economic Powers Act, or any other
13 authority of the President or the Congress under the Con-
14 stitution of the United States.”.

15 **SEC. 11. EFFECTIVE DATE.**

16 The amendments made by this Act shall apply after
17 the end of the 90-day period beginning on the date of en-
18 actment of this Act.